

Decision 02-01-059 January 23, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Global Photon Systems, Inc. and Global West Network Inc. for authority to modify their Certificates of Public Convenience and Necessity to Permit Construction of Specific Telecommunications Facilities.

Application 00-06-002
(Filed June 2, 2000;
Petition for Modification
Filed April 6, 2001; Petition
for Modification Filed
November 13, 2001)

OPINION MODIFYING DECISION 00-11-037

Global Photon Systems, Inc. and its subsidiary Global West Network, Inc. (collectively "Petitioners") filed a Petition for Modification of Decision (D.) 00-11-037 regarding construction of an undersea and land-based fiber optic telecommunications network (the "Project").¹ This decision grants one of three requested modifications to D.00-11-037. The other two requested modifications require additional review and will be addressed in a further decision.

A. Background

In granting authorization for the Project, Ordering Paragraph 4 of D.00-11-037 states that Petitioners "shall obtain all necessary permits for the Project and shall file a petition to modify this order to obtain approval for any subsequent changes to the route or construction activities of the Project."

¹ The term "Project" is used here as defined in D.00-11-037 and in Application 00-06-002, which contains a detailed description of the route and construction activities for the proposed fiber optic network.

In April 2001, Petitioners filed a Petition for Modification of D.00-11-037 (First Petition) because in the course of obtaining all permits necessary to construct the Project, Petitioners were required to make a number of minor adjustments to the route.² The First Petition was granted by the Commission in D.01-05-027.

On November 13, 2001, Petitioners filed another Petition to Modify D.00-11-037 (Second Petition) requesting Commission approval to construct a limited amount of new facilities that will allow customers to connect to the Global West Network. In addition, Petitioners request approval to modify the construction method to be used on a portion of one route segment due to the unavailability of space on Pacific Bell poles and the need to install new conduit instead. Petitioners explain that at the time the FEIR was prepared, it was not possible to know exactly where all future customers would be located. Therefore, they must now submit this Second Petition to construct additional facilities to connect these customers.

There were no protests or responses to the Second Petition. On December 11, 2001, Petitioners submitted an amendment to the Second Petition and a motion to shorten the response time to this amendment. The assigned administrative law judge granted the motion and shortened the response period to 10 days after the filing of the amendment.

² The route is described in the Final Environmental Impact Report (FEIR) certified by the State Lands Commission as Lead Agency, and considered by this Commission as a Responsible Agency.

B. Requested Modifications to the Project

The Second Petition describes three changes in construction methodology or connections for the Project:

1. Connection between Applicant's Point of Presence (POP) and the international gateway in Los Osos (Los Osos Segment)
2. Connection between Applicant's POP and another carrier's POP in Santa Barbara (Santa Barbara Segment)
3. Modification to the construction methodology to be used for a segment between Salinas and Monterey (Monterey Segment)

In their amendment to the Second Petition, Petitioners request that the Commission consider the Los Osos Segment in advance of the Santa Barbara and Monterey Segment modifications because information on those modifications is preliminary and incomplete. Petitioners do not want to hold up review and approval of the Los Osos Segment while they provide further information on the other two modifications. Given this request, we will not describe the Santa Barbara and Monterey segment modifications in detail at this time.

Regarding the Los Osos Segment, Petitioners explain that a substantial portion of California's telecommunications traffic originates in Pacific Rim countries and is carried via transoceanic cables to an "International Gateway" in the San Luis Obispo County town of Los Osos. In order to accept traffic from international carriers, Petitioners must install approximately 2900 feet of new conduit to connect Applicant's POP in Los Osos to the trans-oceanic cables.

Petitioners state that the Los Osos Segment was contemplated by the FEIR and therefore falls within the network approved by D.00-11-037. Petitioners explain that this International Gateway connection was identified as an important purpose of the Project and its general location was described in the

FEIR, although its specific location was not. Petitioners state that at the time the FEIR was prepared, it was not possible to know the precise location of this segment of the Project because a number of the trans-Pacific cables to which it would connect were still under construction. Now that those cables are complete, the segment location is described in the Second Petition, consistent with the connection described and analyzed in the FEIR. Therefore, Petitioners contend the Los Osos Segment is a modification to a route described in the FEIR and not a significant change to the Project.

Moreover, Petitioners explain that future construction of the Los Osos Segment has been comprehensively reviewed by local, state and federal responsible agencies, which have all concluded that the work will have no significant impact on the environment. San Luis Obispo County (“the County”), in its role as Responsible Agency, has determined that construction of the Los Osos Segment is categorically exempt from the California Environmental Quality Act (CEQA). The Second Petition states that permits for the Los Osos Segment were granted on December 7, 2001 following a public hearing held by the County. Petitioners would like to begin construction of the Los Osos Segment in late January 2002. Therefore, they request that the Commission prepare an addendum to the FEIR utilizing the County’s environmental analysis in accordance with CEQA Guideline 15164,³ adopt that addendum, and grant this Second Petition on an expedited basis.

Petitioners contend that the Commission may consider the Los Osos Segment independently of the Santa Barbara and Monterey segments in the

³ The CEQA Guidelines are contained in Title 14 of the California Code of Regulations, Division 6, Chapter 3, Sections 1500-15387.

Second Petition because each of these three modifications involves a physically distinct and independent portion of the network and there is no potential that the modifications will result in cumulative impacts when analyzed together.

Petitioners maintain that the modifications are geographically distant and functionally distinct from each other, so a discussion of cumulative impacts can be limited based on CEQA Guideline 15130(b)(1)(B).

Attached as Exhibits to the Second Petition are copies of the Department of Transportation Encroachment Permit, a detailed description of the Los Osos construction, documents submitted by Petitioners in support of their Land Use Permit Application from San Luis Obispo County, and a letter from the Fish and Wildlife Service of the Department of the Interior. In addition, the Second Petition includes the draft Staff Report prepared by the County concluding that the construction is categorically exempt from CEQA as a Class 3 exemption for construction of limited numbers of new small facilities. (CEQA Guideline 15303) Subsequent to submission of the Second Petition, Petitioners provided a final copy of the County's approval of the Los Osos Segment and issuance of a minor use/coastal development permit.

C. Discussion

The specific language of D.00-11-037 required a petition for modification for any route changes, and this Second Petition indicates that once again, the route for the Project has changed. Consistent with Petitioners' request, we consider only the Los Osos Segment at this time.

The Second Petition contains the route change descriptions and maps regarding the Los Osos Segment. Petitioners have obtained all final approvals for the Los Osos Segment as required by D.00-11-037. Documentation provided

with the Second Petition indicates that responsible agencies have conducted all additional environmental analysis required by CEQA for the Los Osos route

adjustment. Based on its review of the documents prepared by responsible agencies and its own site visit, the Commission's Energy Division staff prepared an Addendum (which is attached as Exhibit A) and concluded that the modifications to the Project described in the Second Petition as amended "will not result in a significant impact to the environment, and will not require mitigation measures in addition to those initially proposed in the FEIR." The staff concluded that preparation of an addendum was appropriate under CEQA Guidelines Sections 15162, 15163 and 15264. Given the findings of our staff, we will consider and approve the Addendum to the FEIR prepared by the Energy Division regarding the Los Osos Segment. Therefore, we will grant the Second Petition in part to approve construction of the Los Osos Segment.

This decision does not modify any other provisions of the November order, and it does not grant approval of the requested modifications for the Santa Barbara and Monterey Segments. We will leave the proceeding open to consider these remaining modifications. We direct the ALJ to issue a ruling setting a deadline for Petitioners to provide further information on the Santa Barbara and Monterey Segments so we can act on the remaining elements of the Second Petition. Petitioners must still comply with the mitigation monitoring program adopted by the State Lands Commission in its FEIR, and they must still obtain all necessary permits for the Project.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

Findings of Fact

1. Petitioners filed a second Petition for Modification of D.00-11-037 because Petitioners have made minor adjustments to the route or changes in construction methodology for the Project approved in that order.

2. The route change for the Los Osos Segment results from Petitioners' need to install approximately 2900 feet of new conduit to connect Petitioners' POP in Los Osos to trans-oceanic cables.

3. All necessary CEQA review of the Los Osos segment modification described in the Second Petition has occurred.

4. Commission Energy Division staff prepared an Addendum to the FEIR that concludes the Los Osos construction will not result in a significant impact to the environment.

Conclusions of Law

1. The Addendum to the FEIR contained in Attachment A to this order should be approved.

2. D.00-11-037 should be modified to authorize construction of the facilities along the Los Osos Segment as described by Petitioners in their Second Petition, as amended on December 11, 2001.

3. This order should be effective immediately to allow Petitioners to complete construction according to the terms and conditions of local permits.

O R D E R

IT IS ORDERED that:

1. The Petition for Modification of Decision (D.) 00-11-037 filed on November 13, 2001 by Global Photon Systems, Inc. and Global West Network,

Inc. (Second Petition) is granted in part to allow construction of the “Los Osos Segment.”

2. The Addendum to the Final Environmental Impact Report regarding the Los Osos segment construction is approved.

3. The assigned administrative law judge shall issue a ruling setting forth dates for Petitioners to provide additional information on the Santa Barbara and Monterey Segment modifications described in the Second Petition.

4. This proceeding shall remain open for consideration of the remaining issues in the Second Petition.

This order is effective today.

Dated January 23, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

ATTACHMENT A

STATE OF CALIFORNIA

GRAY DAVIS, *Governor*

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



MEMORANDUM

From: Nicolas Procos, Regulatory Analyst
Date: January 3, 2002
Subject: Addendum to Final Environmental Impact Report and subsequent environmental review by San Luis Obispo County on the Los Osos segment of the Global Photon project

BACKGROUND

On November 13, 2001, pursuant to Rule 47 of the Commission's Rules of Practice and Procedure and Ordering Paragraph 4 of D.00-11-037, Global Photon Systems, Inc. (U-6090-C) (Collectively "the petitioners") and Global West Network, Inc. (U-6194-C) submitted a Petition to Modify its Certificate of Public Convenience and Necessity ("CPCN") granted by D.00-11-037 (Petition to Modify). The petition requested approval to construct two additional segments and to modify the construction methodology to be used for another segment of the project. Subsequent to this, the petitioners modified the November 13 petition to include additional information demonstrating that the Los Osos segment was contemplated in the Final Environmental Impact Report (FEIR) prepared for the original project by California State Lands Commission and incorporated by the Commission in D.00-11-037. In addition, the Los Osos segment was also considered by San Luis Obispo County Department of Public Works and on Dec. 7th, 2001 was granted a Class 3 Categorical Exemption (CEQA guidelines 15303) and subject to further minor use permit/coastal development permit review. As part of the Commission's own review process, the CEQA Unit has reviewed the FEIR and environmental materials prepared by the County of San Luis Obispo, which were attached to the Petition to Modify, and conducted a site visit on December 21, 2001.

PROJECT DESCRIPTION

The Applicant is requesting to install an underground fiber optic cable to connect the Global West Mini Point of Presence (POP) to the international Gateway. The proposed Los Osos Mini POP involves two construction efforts: (1) tenant improvements inside a leased commercial space that will become the Global West Mini-POP; and (2) installation of underground fiber optic cable to connect the mini POP with the nearby International Gateway. The path for the cable will follow existing private easement and a public right of way (Los Olivos Avenue) along the approximately 1600 foot route.

Global West Network proposes to lease 2835 square feet vacant commercial suite in the Vons shopping center (1058 Los Osos Valley Road). The Mini POP will house optical signals before

connection to the Global West Network for Statewide distribution. Two full time network engineering/technical personnel will staff the mini-POP.

Two distinct parallel cable paths separated by 4 to 18 feet will be constructed to ensure that a single accident, such as a backhoe dig, would not sever both cables simultaneously. Both paths follow existing private easement (alleys) and a public right of way (Los Olivos Avenue) for the approximately 1600-foot route, as depicted in Attachments B, C, and D in the Petition to Modify. Local encroachment permits will be required for work along Los Olivos Ave and 11th Street.

CONSTRUCTION METHODOLOGY

The Cable will be enclosed in 4-inch diameter conduit. This cable will be placed under the existing paved road by directional boring to minimize the disturbance to the pavement and disruption to traffic. No trenching is foreseen at this time and will be subject to further Commission review if needed in the future. The boring will be accomplished in 5 segments and involve a total of 9 bore pits with cable placement at a minimum depth of 3' and a horizontal separation of 10'18". All the construction will require approximately 15 business days to complete.

ANALYSIS OF POTENTIAL ENVIRONMENTAL IMPACTS

Aesthetics

The proposed action will have no foreseeable impact on the existing area and is consistent with local usage. The reconfiguring of the mini-POP building will occur almost exclusively inside the existing building. Any permanent outside alterations would be subject to requirements of the FEIR and the local conditional use permit. The approximately 1600 foot of directional boring will have no permanent aesthetic impact.

Agricultural Resources

The existing area is highly developed. The project conforms to the local Planning Area Standards (San Luis Obispo County of Building and Planning Staff report; Tentative Notice of Action, Page 2.)

Air Quality

The proposed project will have no impact on the existing air quality standards. Global is required to comply with the local air quality specifications and construction conditions as described in the FEIR.

Biological Resources

The site is in the vicinity of habitat for the federally listed Morro shoulderband snail. Under Section 23.07.170 of the Local Land Use Ordinances and Section 9 of the Endangered Species Act of 1973, Global was required to evaluate the area for any endangered species and to obtain an incidental take permit if necessary. On October 9, 2001 Global received confirmation from Diane K. Nooda, Field Supervisor, United States Dept. of the Interior, Fish and Wildlife Service that the proposed project will not result in incidental take of any endangered species and an incidental take permit was therefore not required (Copy included in Application). However, Fish and Wildlife Service and San Luis Obispo County are requiring a Service approved biologist to train the

construction personnel in recognition and avoidance of Morro shoulderband snail and to monitor the project. Global is subject to any other requirements or mitigations as described in the FEIR, including the requirements of the Construction Impact Mitigation Plan as described in the FEIR with regards to the San Luis Obispo segment (Volume 1; Section 4.3-4; Mitigation Measures TB-1 and TB-1d.)

Cultural Resources.

Section 23.07.104 of the Local Land Use Ordinance Standards requires Global to assess the project area for any impacts on known or unknown cultural deposits. Global prepared a Phase 1 Cultural Resource Survey for the Los Osos project and no culturally significant deposits were located. In addition, on April, 19, 2000 Global entered into a Memorandum of Agreement with the local San Luis Obispo County Chumash Council regarding their respective roles in the identification, treatment and disposition of native American human remains, grave goods, cultural resources artifacts and places of special significance, which is attached to the Petition to Modify. Global is subject to any other requirements or mitigations as described in the FEIR.

Geology and Soils

The proposed project will not result in a significant impact to Geology or soils.

Hazards and Hazardous Materials

It is not expected that the construction activities will encounter or release hazardous materials. Any such occurrence will be subject to local ordinance and the conditions for disposal as delineated in the FEIR.

Hydrology and Water Quality

The proposed project will not result in a significant impact to Hydrology and Water quality.

Land Use Planning

The proposed project is consistent with the local land use element of the General Plan.

Noise

The proposed project will temporarily create additional noise in the project area. Due to the short duration of the project this is not considered significant.

Transportation and Traffic

Horizontal Directional Drilling activities are not expected to impact existing level of service as construction activities will either be located in an existing parking lot or along a side road leading up to the International Gateway. In addition, due to the short duration of the project this is not considered significant.

DETERMINATION

Following its review of materials submitted in connection with the Petition to Modify and its site visit, the CEQA Unit of the CPUC's Energy Division finds the proposed modification to Global's previously approved project will not result in a significant impact to the environment, and will not require mitigation measures in addition to those initially proposed in the FEIR. Global is subject to all conditions of the FEIR and the local permitting process.

Based on the above discussion, no Supplemental or Subsequent EIR is needed pursuant to State CEQA Guidelines Sections 15162, 15163 and 15264. No important revisions are required in the FEIR, due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. No new information has come to light that would indicate the potential for significant impacts not discussed in the FEIR, nor is there a substantial change in the circumstances under which the project is undertaken.

Accordingly, we have prepared this Addendum for the Commission's review in connection with its consideration of the Petition to Modify.

(END OF ATTACHMENT A)